

MINUTES OF BOARD OF ADJUSTMENT
OCTOBER 28, 2021
BUFFALO COUNTY COURTHOUSE COMMISSIONER'S ROOM
4:00 p.m.

Chairperson Pemberton-Riege opened the meeting at 4:00 p.m. at the Buffalo County Courthouse on October 28, 2021.

Agenda for such meeting was regularly posted as required by law.

Present were: Rodney Gangwish, Barb Pemberton-Riege, Randy Vest, Larry Hardesty and alternate Rich White. Absent: Lloyd Wilke. Also present were Deputy County Attorney Kari Fisk, Zoning Administrator Dennise Daniels and several members of the public. We do have a quorum.

Chairperson Pemberton-Riege announced we do abide by the Open Meeting Act and copies are available for anyone wanting to see it.

Notice of the meeting was given in advance, thereof, by publication in the legal newspaper. A copy of the proof of publication is on file in the Zoning Administrator's office. Advance notice of the meeting was also given to the Board of Adjustment and availability of the Agenda was communicated in the advance notice. The agenda is available for anyone wanting a copy.

The public forum was opened at 4:02 p.m. Several citizens of the public were present, but no one provided any comment at this time. The public forum closed at 4:02 p.m.

Chairperson Pemberton-Riege opened the public hearing at 4:02 p.m. for a Zoning Variance, received from Michael Ellis, under Section 5.17, Buffalo County Zoning Regulations, Minimum Yard Requirements, in the Agriculture (AG) District, requiring a minimum front yard of fifty (50) feet, described as Part of Government Lot Two (2), Government Lot Three (3), Government Lot Ten (10), and Government Lot Eleven (11), in Section Nineteen (19), Township Eleven (11) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

Chairperson Pemberton-Riege requested that any parties presenting this application should step forward. Mr. Michael Ellis stepped forward to present his application. Mr. Ellis stated that he was in front of The Board to request a relaxation of Section 5.17, requiring a 50-foot setback. He discussed elevation of the land, and presented "Exhibit B" in the records of the Buffalo County Zoning Office. Let the record show: "Exhibit A" was the legal description submitted with the Application of Variance. Deputy County Attorney Fisk asked Mr. Ellis if he had any topographical or elevation studies done to give to The Board. Mr. Ellis stated that he did not, but did have a topographical map, which was available on Buffalo County's GIS. He disclosed the map was not a reliable description of the topography, but wanted The Board to be aware there were some topographic issues with the property.

Chairperson Pemberton-Riege asked Mr. Ellis if he acquired a permit. Mr. Ellis stated, at the time of construction, he was unaware of the violation of Zoning Regulations. He testified, while working with a contractor on a quote for the scope of the project, the contractor had not listed licensing or permitting fees. Mr. Ellis testified the contractor had told him that he was far enough

out in the county, a permit would not be required and, therefore, no fees were associated with permitting. Mr. Ellis went on to explain, with this information in mind, he would do the work himself and decided not to employ that particular contractor. Mr. Hardesty and Mr. Vest stated that they had driven out to do an inspection of the property. Mr. Hardesty stated that if Mr. Ellis had called the Zoning Administrator before beginning construction, the topography would not have been an issue for Mr. Ellis. He went on to say that the issue would have been mitigated immediately and would have been less costly. Deputy County Attorney Fisk asked Mr. Ellis if he had a contractor's license. Mr. Ellis stated that he did not. Deputy County Attorney Fisk asked Mr. Ellis if he had worked with subcontractors that were licensed. Mr. Ellis attested that he was unaware if anyone involved in the project was licensed, but appeared to be.

Mr. Ellis stated the zoning violation was just one of a number of issues associated with the project and the sale of the property. He explained further, after some issues with the bank and filing an Affidavit of Affixture, the closing on the house with the potential buyers continued to be delayed. He stated, at that time, he received the letter from The Buffalo County Zoning Office declaring a structure had been constructed without proper permitting. He stated he is now aware of the zoning violations he had, but still wished to request the relaxation of the front yard requirements. Mr. Ellis admitted if he had gotten the proper permitting, he would have known his plans for house placement weren't sufficient.

Rebecca Cherry, the girlfriend of Mr. Ellis, testified in support of application. She stated that he had gravel brought in and added to, what he had believed, was the driveway. She attested she and Mr. Ellis were not aware of the existence of a public road to the residence. She indicated that Mr. Ellis is a hard worker just trying to improve the value of the property. She addressed The Board, asking whether Mr. Ellis should have had the highway department gravel the road since it is not just a driveway. Chairperson Pemberton-Riege reminded her that they are not the highway department and he would have to call them and inquire about the road.

Robert Fitzgerald, the realtor for the potential purchasers, Gregory & Rebecca Nies, then stepped forward to present his case, in support of the variance. He wanted to clarify that he was not there to represent Mr. Ellis, but the potential buyers. He stated that he and the buyers are interested in the outcome of the process. He explained the closing on the property originally had been halted because an Affidavit of Affixture, related to the manufactured home, had not been properly filed. Mr. Fitzgerald testified, then, it was discovered the new residence was not in compliance. Mr. Fitzgerald admitted the bank should have caught the issues earlier in the closing process.

Rebecca Nies, potential purchaser, also testified. She indicated the property is beautiful and they are enjoying the view. She detailed they have been residing in the house, and were unaware of the road's status. She indicated that a gate blocks the end of the road, so they weren't aware the road had been platted straight through the property.

Chairperson Pemberton-Riege added, a neighbor, who could not attend the meeting, submitted a opposition of the variance.

Chairperson Pemberton-Riege asked if anyone else wished to testify. No one stepped forward.

Chairperson Pemberton-Riege closed the public hearing at 4:51 p.m.

A motion was made by Mr. Hardesty, seconded by Vice-Chairperson Gangwish., to disapprove the request for the variance of Section 5.17, Buffalo County Zoning Regulations, Minimum Yard Requirements, requiring a minimum front yard of fifty (50) feet, for property described as Part of Government Lot Two (2), Government Lot Three (3), Government Lot Ten (10), and Government Lot Eleven (11), in Section Nineteen (19), Township Eleven (11) North, Range Sixteen (16) West of the Sixth Principal Meridian, Buffalo County, Nebraska.

This Board finds that an undue hardship has not been demonstrated because the following conditions exists: based on Section 4, “the granting of such variance is based on upon reasons of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice.” This is a matter of convenience.

Voting “Aye”: Gangwish, Pemberton-Riege, White, Vest and Hardesty.

Absent: Wilke.

Abstain: None.

Voting “Nay”: None.

Motion carried.

Moved by Mr. White, seconded by Vice-Person Gangwish to approve the minutes of the July 8, 2021 meeting of the Board of Adjustment as mailed.

Voting “Aye”: Gangwish, Pemberton-Riege, & White.

Absent: Lloyd Wilke.

Abstain: Vest and Hardesty.

Voting “Nay”: None.

Motion carried.

Chairperson Pemberton-Riege announced, to The Board, that Lloyd Wilke’s term has expired and he has decided not to seek reappointment. As a result, there is a vacant seat on The Board of Adjustment. Chairperson Pemberton-Riege asked Zoning Administrator Daniels if she could review and report the number of years Mr. Wilke has served on The Board during the next meeting and to ensure that he is thanked for his many years of service. Zoning Administrator Daniels ensured The Board she would research the request and provide an appropriate recognition to Mr. Wilke.

Chairperson Pemberton-Riege adjourned the meeting at 5:05 P.M. until such time they will be called into session.

Chairperson Barb Pemberton-Riege